No. 1090

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

D. M. CAROTHERS, DOING BUSINESS AS ALLRIGHT AUTO PARK, ET AL., *Petitioners,*

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, AND PAUL PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, SUCCESSOR IN OFFICE TO CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

WALTER F. BROWN
DURELL CAROTHERS
ATTORNEYS FOR THE PETITIONERS, D. M. CAROTHERS, DOING BUSINESS AS ALLRIGHT AUTO PARK, AND SPENCER J. SCOTT, MORIN M. SCOTT, ATTORNEY IN FACT FOR SPENCER J. SCOTT, LEE PRICE AND D. M. CAROTHERS, COMPOSING THE CO-PARTNERSHIP ALLRIGHT PARKING SYSTEM, LIMITED.

TEXAS CO., HOUSTON

No.....

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Hon. Supreme Court of the United States:

Your petitioner, D. M. Carothers, doing business as Allright Auto Park, respectfully petitions this court to review on writ of certiorari a decision and decree of the United States Circuit Court of Appeals for the Fifth Circuit, hereinafter referred to as the Circuit Court of Appeals, rendered on December 13th, 1945, upon which petition for rehearing duly filed was denied on January 10th, 1946, in a certain cause styled Chester Bowles, Administrator, Office of Price Con-

trol, Appellant and Cross-Appellee, v. D. M. Carothers, doing business as Allright Auto Park, et al, Appellees and Cross-Appellants (and Reverse Title), in so far as said decision and decree affects him.

Also your petitioners, Spencer J. Scott, Morin M. Scott, Attorney in Fact for Spencer J. Scott, Lee Price and D. M. Carothers, composing the limited partnership, Allright Parking System, Limited, respectfully petition this court to review on certiorari the said decision and decree in so far as it affects petitioners last named.

After the rendition of the decision of the United States Circuit Court of Appeals for the Fifth Circuit in this case, and the denial of the rehearing therein, Hon. Chester Bowles ceased to hold the office of Administrator, Office of Price Control, and the Hon. Paul Porter is now his successor in office and duly appointed, qualified and acting Administrator, Office of Price Control. Petitioners pray that this court permit the cause to be continued and maintained against the Honorable Paul Porter, successor in office to the Honorable Chester Bowles, as such Administrator, and respectfully represent that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.

Statement of the Matter Involved.

The Administrator brought this suit in the District Court of the United States for the Southern District of Texas, hereinafter referred to as the trial court.

The relief sought against petitioner D. M. Carothers, doing business as Allright Auto Park, was as follows:

2. For a permanent injunction against the Defendant D. M. Carothers, individually restraining him from charging, demanding and receiving rates for parking service at any establishments now operated or that may hereafter be operated by him in excess of the Maximum Legal rates provided by Maximum Price Regulation No. 165.

3. For a further permanent and mandatory injunction against the Defendant D. M. Carothers, individually requiring him to immediately and forthwith compute his maximum prices for the "lock and park" service now offered by him, under the provisions of Section 1499.102(c) of said Regulations; and to file said computation on the form provided therefor with the Houston District office of the Office of Price Administration for proper review and examination by said office and that he be further required by order of this court to forthwith comply with said Section of said Regulation as to all other establishments at which said service may be offered which may or shall be acquired by him in the future.

4. That the Defendant, D. M. Carothers individually be permanently enjoined from violating Maximum Price Regulation No. 165 in any and all respects.

5. For costs of suit and for general relief. (R. 13-14.)

The relief sought in paragraphs 2 and 4 was denied and that sought in paragraph 3 was granted, to which

action of the trial court in granting the relief prayed for in paragraph 3 petitioner D. M. Carothers took due exception (R. 47).

The relief sought by the Administrator against Spencer J. Scott, Lee Price, Morin M. Scott, Attorney in Fact for Spencer J. Scott, and D. M. Carothers, composing the limited co-partnership Allright Parking System, Limited, was as follows:

1. For a permanent injunction restraining the Defendants D. M. Carothers, Spencer J. Scott, Lee Price and Morin M. Scott, Attorney in Fact for Spencer J. Scott, their employees and representatives from demanding, receiving or using a rate for the service of parking automotive vehicles in the lot at 1014 Main Street in Dallas, Texas, or any other parking lots now or hereafter operated by them, in excess of the maximum rates provided for and established under said Maximum Price Regulation No. 165, as amended; and further restraining said Defendants from violating said Maximum Price Regulation in any other respect.

5. For costs of suit and for general relief. (R. 13-14.)

This relief was denied by the trial court (R. 47), except that one-half of the costs were taxed against "defendant," not indicating which one (R. 47).

The Administrator appealed from the judgment as a whole to the United States Circuit Court of Appeals for the Fifth Circuit (R. 48) and petitioners, who were defendants in said suit, appealed to the United States Circuit Court of Appeals for the Fifth Circuit from those portions of the judgment which were adverse to them (R. 49).

On December 13th, 1945, the United States Circuit Court of Appeals for the Fifth Circuit rendered a judgment and decision in said cause whereby it was ordered and adjudged by said court that the judgment of said District Court in this cause to the extent that it granted injunctive relief to the Price Adminisrator should be affirmed; and to the extent that it denied him injunctive relief that it should be reversed; and that this cause should be remanded to the District Court for proceedings not inconsistent with the opinion of the said Circuit Court of Appeals (R. 66). Petition for rehearing was duly filed by all of your petitioners in said cause and on January 10th, 1946, said petition for rehearing was denied by said Circuit Court of Appeals (R. 86).

The injunctions were sought under Section 205(a) of the Emergency Price Control Act (50 U.S.C.A. War Appendix Section 925), which reads as follows:

> "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act (section 904 of this Appendix), he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

There was no evidence that D. M. Carothers, doing business as Allright Auto Park, had charged in excess

of the alleged ceiling prices on any of the ten lots in Houston, Texas, upon which it was alleged that maximum prices had been fixed by the Administrator, or that he was about to do so. On the contrary, it was admitted that he was complying with all alleged ceilings on these lots (R. 36) and the trial court so found (R. 43). There was no finding by the trial court that he was about to charge in excess of the alleged ceilings on these lots, and no request by the Administrator for any such finding. The Administrator did not complain of this finding of compliance nor did he contend that the trial court should have found that D. M. Carothers, doing business as Allright Auto Park, was about to charge in excess of any alleged ceiling on any lot operated by him or to engage in any act or practice which would constitute a violation of any provision of Section 4 of said Act in regard to these ten lots.

The trial court correctly denied the injunction sought as to the ten lots but the Circuit Court of Appeals reversed the judgment of the trial court to the extent that the trial court denied the injunction as to these ten lots, and this action of the Circuit Court of Appeals is assigned as error in this petition. This action on the part of the Circuit Court of Appeals is wholly unauthorized by the Act and in clear violation thereof.

The only reason given by the Circuit Court of Appeals for this action was that Carothers expected to appeal to the Emergency Court of Appeals for relief from the order specifying the ceilings on these ten lots; that compliance with the order therefore was

not a willing compliance; and that it was the duty of the trial court to single him out and issue a blanket injunction against him on any lots then operated by him or that might thereafter be operated by him requiring him to correctly construe and comply with all orders theretofore made or which might thereafter be made by the Administrator. Such action by the Circuit Court of Appeals was clearly wrong and unduly oppressive. It is assigned as error in this petition. The Act gave Carothers the right to seek relief in the Emergency Court of Appeals on any order that might be made by the Administrator. It did not authorize any court to penalize him or outlaw him because he expressed an intention to avail himself of that right. To penalize a citizen and visit him with dire consequences because he sees fit to avail himself of a right given by Congressional Act would make mockery of the right guaranteed, would violate the most elementary principles of justice, and would result in a destruction of the fundamental liberties of the citizen. The rule laid down has no basis in any reported case and should not be permitted to stand.

Under the decisions of the Supreme Court of the United States blanket injunctions, such as those sought by the Administrator and denied by the trial court, should never be granted. The following quotation is taken from the opinion of the Supreme Court in *New York N. H. & H. R. Co. v. Interstate Commerce Commission,* 200 U. S. 361:

> "The contention, therefore, is that, whenever a carrier has been adjudged to have violated the Act to regulate commerce in any particular, it is

the duty of the court, not only to enjoin the carrier from further like violations of the Act, but to command it in general terms not to violate the Act in the future in any particular. In other words, the proposition is that, by the effect of a judgment against a carrier concerning his specific violation of the Act, the carrier ceases to be under the protection of the law of the land, and must thereafter conduct all its business under the jeopardy of punishment for contempt for violating a general injunction. To state the proposition is, we think, to answer it. *Swift & Company v. United States,* 196, U. S. 375, 49 L. Ed. 5118, 25 Sup. Ct. Rep. 276. * * * The requirement of the Act to regulate commerce that a court shall enforce observance of a statute against a carrier who has been adjudged to have violated its provisions, in no way gives countenance to the assumption that Congress intended that a court should issue an injunction of such general character as would be a violation of the most elementary principles of justice. * * * To accede to the doctrine relied upon would compel us under the guise of protecting the freedom of commerce, to announce a rule which would be destructive of the fundamental liberties of the citizen."

The following quotation is from 28 Amer. Jur., 473:

"If the wrongs complained of and against which injunctive relief is sought are alleged violations of a statute in certain particulars, the decree may restrain the defendant from further like violations of the Act, but should not enjoin in general terms violations of the Act in the future in any particular, because an injunction of such general character would be violative of the elementary principles of justice, in that it would compel the defendant thereafter to conduct himself and his business under the jeopardy of pun-

ishment for contempt for violating a general injunction."

Under the express terms of Section 205(a) of the Act the injunction, if any, must be specific and must only enjoin the engaging in some definite act or practice in which the evidence affirmatively shows the defendant has engaged or is about to engage. The Circuit Court of Appeals has decreed in this case that the trial court's denial of the blanket injunction sought was error, and has ordered that the judgment of the trial court to the extent that it denied this prayer for the blanket injunction should be reversed and remanded. This ruling is assigned as error in this petition and the error is clearly of a most harmful nature.

The order specifying the ceilings on the ten Houston lots showed on its face that it was not "an order of general force and effect" (R. 15-16), and Congress gave the Administrator authority to fix ceilings on commodities only by orders "of general force and effect" (50 U.S.C.A. Appendix Section 902 (a)). The Circuit Court of Appeals held that even though the trial court is of the opinion that an order of the Administrator is void and unauthorized by Congress, and even though the order is in fact clearly void and unauthorized by Congress, nevertheless as a court of equity the trial court must lend its aid and issue a mandatory injunction requiring obedience to the void and unthorized order on penalty of contempt. This holding is assigned as error in this petition. It is clearly erroneous and in conflict with the decisions of

other Circuit Courts of Appeals. See *Bowles v. Meyers,* 149 Fed.2d 440, and *Bowles v. Nu-Way Laundry Co.,* 144 Fed 2d 742, 746.

In the opinion of the Circuit Court of Appeals in the case at bar the Circuit Court of Appeals says in footnote No. 1:

"After entry of the judgment in this case the Emergency Court of Appeals sustained the validity of the Regulation as applied to defendants' Dallas operations." This is not an accurate statement of the result of the decision. The operations in Dallas were the operations of a limited partnership, Allright Parking System, Limited, in which Carothers was one of three partners. The Emergency Court of Appeals was without jurisdiction to determine whether the partnership had or had not engaged in any act or practice which violated Maximum Price Regulation No. 165. Its jurisdiction was limited to determining whether M.P.R. 165, in so far as it included parking, was authorized by the Act. (See *Marlene Linens v. Bowles,* 144 Fed. 2d 874.) The Emergency Court of Appeals held in the Allright Parking System case (1) that prices charged for space rental for parking plus other services in connection therewith were within the coverage of the Act and subject to control by the Administrator; (2) that prices charged for space rental for parking without other services rendered in connection therewith were not within the coverage of the Act or subject to control by the Administrator; and (3) that M.P.R. No. 165 covered charges for space rental plus other services in connection therewith and did not cover space rental without such other services and that

it was therefore valid, for which reason the petition was dismissed.

In the case at bar the Administrator had the burden of proving that Carothers was furnishing space rental plus services in connection therewith and charging therefor in excess of the prices legally fixed therefor by the Administrator. It was stipulated on the trial that Carothers was merely furnishing space rental without any services in connection therewith (R 8-9); the court so found (R. 41); and this fact finding of the court is not attacked in any way. It follows that the trial court did not err in denying the injunction, there being no basis in the pleadings, the evidence or the findings of fact for the rendition of any other judgment, and that the Circuit Court of Appeals was in error in reversing the trial court's judgment in this respect. This is one of the errors assigned in this petition.

Another reason why the trial court's judgment in so far as it denied injunctive relief should not be disturbed is this: The relief sought against Carothers is that he be enjoined from charging prices in excess of the maximum legal rates provided by Maximum Price Regulation No. 165, and that he be permanently enjoined from violating M.P.R. 165 in any and all respects (R. 13-14)). On July 1st, 1944, before this case was tried in the trial court, the Administrator amended M.P.R. 165 and re-designated it R.M.P.R. No. 165 (services). 8 F.R. 7439 et seq. In that amendment he repealed entirely 1499.101(c) (4), the section specifying services in connection with parking, and he also provided that storage and services incidental

thereto should no longer be regulated by R.M.P.R. 165 but instead should be regulated by "General Maximum Price Regulation." They are still so regulated by "General Maximum Price Regulation" and not by R.M.P.R. 165 as it now exists.

Petitioner D. M. Carothers assigns error in this petition to that part of the decree which required him to file the reports under Section 1499.102(c) of M.P.R. 165.

Section 1499.102 with its paragraphs (a), (b) and (c) is copied in full in the Appendix at the end of this petition and brief.

The granting of this relief was fundamentally erroneous for the following reasons:

(1) Section 1499.102(c) was abolished by the Administrator before the case was tried and it has never been in force at any time since.

(2) It was true, and admitted by the Administrator to be true that Carothers could not be required to file a report under Section 1499.102(c) or under any other section unless he was unable to compute the prices under Section 1499.102(a) or Section 1499.102(b) (see R. 7-8 and the particular sections of M. P. R. 165 as contained in the appendix). In order to secure an injunction requiring a filing under 1499.102(c) the burden rested on the Administrator to allege and prove that Carothers' maximum prices could not be determined under 1499.102(a) or 1499.102(b), and there was a total absence of any allegation, proof or finding of these essential facts.

(3) As an essential prerequisite to an order requiring Carothers to file in connection with any lots a re-

port under Section 1499.102(c) or under any other order of the Administrator, it was necessary to affirmatively establish that on said lots Carothers was furnishing and making charge for services in addition to space rental, since his charges were not subject to regulation by the Administrator unless they covered services as well as space rental. There was no allegation, proof or finding that services were being rendered in connection with the space rental and on the contrary it was alleged by the Administrator (R. 8-9), stipulated on the trial (R. 35) and found by the court (R. 41) that Carothers was merely renting space and furnishing no services whatever on the lots in question. There was therefore nothing in the record warranting the granting of the Administrator's prayer for the injunction requiring the filing of the reports.

(4) The only authority for injunctions contained in the Act is to be found in Section 205(a) which authorizes injunctions against acts or practices which constitute a violation of any provision of Section 4 of the Act, which last named section does not deal in any way with the records, reports or orders in connection therewith.

(5) Section 202 of the Act provides in detail how the Administrator is to secure any information which he deems necessary and proper to assist him in prescribing any regulation or order under the Act. This section provides for compulsory process of subpoena, requiring any and all persons to appear and give testimony before the Administrator and it guarantees immunity from prosecution and the infliction of pen-

alties in connection with any matter upon which the persons subpoenaed give evidence documentary or otherwise. The statutory method is exclusive and an attempt to coerce the giving of information by injunction without the protection provided by statute is unnecessary, unauthorized and highly oppressive.

While there is included in this same proceeding a suit against the partnership Allright Parking System, Limited, and its component members, such suit is distinct from that against D. M. Carothers individually. It involved a lot at 1014 Main Street, Dallas, Texas.

It was alleged by the Administrator (R. 8-9), stipulated on the trial (R. 35), and found by the court (R. 41) that at this lot in Dallas the operation of the partnership "consisted, and now consists of the mere furnishing of space for the parking of automobiles" with no service whatever.

The Emergency Court of Appeals has found in *Carothers et al. v. Bowles,* 148 Fed. (2d) 554, that M. P. R. 165 (now repealed) was valid as to parking only because it purported to cover the furnishing of space *plus services,* and that the "mere furnishing of space for the parking of automobiles" without services is not within the coverage of the Act.

In the case at bar it was stipulated on the trial that the Administrator had on May 31st, 1944, issued an order and opinion fixing and determining rates for the Dallas lot, providing a rate of 25c for all-day in-and-out and 15c for three hours or less. (R. 35.) It was not alleged or admitted that a charge of more than 15c had been made for three hours or less but it

was admitted that a charge of 35c had been made and received for all-day parking in this lot. (R. 36.)

The members composing the co-partnership Allright Parking System, Ltd. moved to dismiss the appeal of the Administrator as against them on the ground that the issues as to them had become moot since the only parking lot they operated was the one located in Dallas on which the lease had terminated and which had been operated at all times since May 1st, 1945, the date when the partnership lease terminated, by other parties in no wise connected with the Allright Parking System, Limited, or any of its members. The motion was duly verified and the facts therein alleged were not questioned by the Administrator (R. 54-56.) The Circuit Court of Appeals failed and refused to sustain this motion, which action was clearly erroneous, and is assigned as error in this petition.

Except as heretofore alleged the petitioners composing the co-partnership Allright Parking System, Limited, adopt the above statements as to petitioner D. M. Carothers, doing business as Allright Auto Park in connection with the errors assigned by them.

This Court Has Jurisdiction.

The basis on which it is contended that this court has jurisdiction to review the judgment or decree in question is that the case is a civil case in the United States Circuit Court of Appeals for the Fifth Circuit and jurisdiction is expressly conferred upon the Supreme Court by Judicial Code, Section 240,

amended (28 U. S. C. A. Section 347). The date of the judgment or decree sought to be reviewed is December 13th, 1945. (R. 66.) Petition for rehearing was filed in the United States Circuit Court of Appeals by the petitioners on January 3rd, 1946 (R. 67) and the petition for rehearing was denied by such Circuit Court of Appeals on January 10, 1946. (R. 86.)

Questions Presented.

The following questions are presented:

(1) Under Section 205(a) of the Emergency Price Control Act was the trial court authorized to issue an injunction against Carothers as to the ten lots when there was no showing that he had engaged or was about to engage in any act or practice in connection with those ten lots which constituted or would constitute a violation of Section 4 of said Act?

(2) If a person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of Section 4 of the Emergency Price Control Act is not the authority of the trial court under Section 205(a) of such Act confined to enjoining such act or practice?

(3) Was the trial court authorized to issue a blanket injunction, such as was sought by the Administrator in his prayers 2 and 4 against D. M. Carothers, doing business as Allright Auto Park?

(4) Was the trial court authorized to grant a blanket injunction such as was sought by the Administrator against the members of the partnership, Allright Parking System, Ltd.?

(5) Was the trial court required or authorized to issue the injunction sought by the Administrator in prayers Nos. 2 and 4 on the ground that, while it was not shown that Carothers had violated or was about to violate the order specifying the ceilings on the ten lots nevertheless he was subject to injunction because he had stated that he expected to appeal to the Emergency Court of Appeals for relief from that order?

(6) Was the order by which the Administrator attempted to fix ceilings on the ten Houston lots an order of general force and effect?

(7) Does the Emergency Price Control Act authorize the Administrator to fix maximum prices to be charged for commodities by orders which are not "of general force and effect?"

(8) Was the Circuit Court of Appeals in error in holding that while a trial court may refuse to issue an injunction restraining the violation of an administrative order establishing maximum prices it is error if the court so rules solely because it considers the order or regulation to be invalid, whether its validity is tested by constitutional requirement, by the grant of power in the statute or by modification made in that grant of power?

(9) Is a court of equity of the United States required to grant a mandatory injunction for the enforcement of an order which Congress has not authorized the Administrator to make?

(10) Since it was admitted that petitioners were merely furnishing space rental without any ser-

vices in connection therewith was the trial court authorized or required to issue any injunction such as was sought by the Administrator and denied by the trial court?

(11) If the Administrator sought a mandatory injunction requiring the filing of reports under 1499.102(c) of M. P. R. 165 and before the case was tried that provision was entirely abrogated by the Administrator and has never been in effect since, was the trial court authorized to issue the mandatory injunction to file such reports as prayed for?

(12) Could Carothers be required by injunction to file a report under 1499.102(c) of M. P. R. 165 without any proof that his prices could not be determined under 1499.102(a) or 1499.102(b) when 1499.102(c) expressly provided that it applied only where no price could be determined under 1499.102(a) or 1499.102(b)?

(13) Does Section 205(a) of the Act authorize injunctions requiring the filing of a report under Section 1499.102(c) of M. P. R. 165?

(14) Does Section 205(a) of the Act authorize the Administrator to secure information by injunction when Section 202 of the Act provides that he may secure such information by the compulsory process of subpoena and the party giving the information under subpoena is guaranteed immunity from prosecution and the infliction of penalties for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise?

(15) Should not the Circuit Court of Appeals have sustained the motion to dismiss the appeal as against the partnership when it was conclusively shown that the issues raised by such appeal were moot?

Reasons Relied on for Allowance of Writ.

(1) The United States Circuit Court of Appeals for the Fifth Circuit has held and decided in this case:

(a) That the judgment of the trial court to the extent that it denied injunctive relief to the Administrator should be reversed and the cause should be remanded to the trial court for further proceedings not inconsistent with the opinion.

(b) That although there was no evidence that D. M. Carothers, doing business as Allright Auto Park, had charged in excess of any alleged ceiling prices on any of the lots operated by him, or that he was about to do so, and although on the contrary, it was admitted that he was complying with all alleged ceilings and the trial court so found, the trial court nevertheless erred in so far as it refused to issue the injunction sought by the Administrator against Carothers.

(c) That, although the injunction sought by the Administrator and denied by the trial court was a general injunction in the very broadest of terms and in a form which has been vigorously condemned by the Supreme Court, nevertheless the trial court was in error in so far as it denied such injunction.

(d) That, although Section 205(a) of the Emergency Price Control Act clearly provides that any injunction issued thereunder must restrain the particular act or practice which the evidence shows the defendant has engaged in or is about to engage in, the trial court erred in denying the injunction as sought by the Administrator although that injunction was not confined to any particular act or acts or any particular practice or practices.

(e) That, although Congress has authorized the Administrator to fix ceilings on commodities only by orders of general force and effect (see 50 U. S. C. A. Appendix, Section 902(a)), and although the order on the Houston lots upon which the Administrator seeks the injunction is not an order "of general force and effect," nevertheless the trial court was in error in refusing to grant the injunction sought by the Administrator and denied by the trial court.

(f) That, although charges for space rental without any services in connection therewith are not subject to regulation by the Administrator under the terms of the Emergency Price Control Act, and although the Emergency Court of Appeals has so held, and although it was stipulated and established by uncontroverted evidence that petitioner Carothers was merely furnishing space rental for parking without other services, the trial court erred in denying the injunctive relief sought by the Administrator against Carothers and denied by the trial court.

(g) That, although Carothers had not engaged in any act or practice violating the price ceilings fixed by the Administrator on the Houston lots operated

by Carothers, and there was no evidence that he was about to do so, nevertheless, because he had expressed an intention of appealing to the Emergency Court of Appeals for administrative relief from the Administrator's order, the trial court was in error in denying the Administrator the injunctive relief sought against Carothers and denied by the trial court.

(h) That, although at the time of the trial in the trial court and at all times thereafter the regulation of services incident to storage had been transferred by the Administrator to "General Maximum Price Regulation" and had been removed from M. P. R. 165 and R. M. P. R. 165, nevertheless the trial court was in error in denying the Administrator an injunction requiring Carothers to comply in all respects with M. P. R. 165.

(i) That the trial court was in error in denying to the Administrator the injunctive relief sought by him against Scott, et al., composing the co-partnership Allright Parking System, Limited.

Each of the foregoing decisions and rulings of the United States Circuit Court of Appeals for the Fifth Circuit, from 1 (a) to 1 (i), inclusive, is erroneous and constitutes an error on the part of said Circuit Court of Appeals. In each of said decisions and rulings said Circuit Court of Appeals has decided an important question of Federal law, and has decided same in a way probably in conflict with applicable decisions of this court. If the important question of Federal law is one which has not in fact been decided by this court, it is a question which should be settled by this court. In each of such decisions and

rulngs said Circuit Court of Appeals has decided an important question of Federal law, and has decided same in a way probably in conflict with applicable decisions of this court. If the important question of Federal law is one which has not in fact been decided by this court, it is a question which should be settled by this court. In each of such decisions and rulings the said Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by the trial court, as to call for an exercise of this court's power of supervision. The holding and decision of said Circuit Court of Appeals that the trial court was in error in denying an injunction in such general terms as sought by the Administrator is in conflict with the decision of this court in *New York N. H. & H. R. Company v. Interstate Commerce Commission,* 200 U. S. 361, and the various cases therein referred to. The Supreme Court has said in the case last cited that the issuance of an injunction of such general character would be a violation of the most elementary principles of justice and would announce a rule which would be destructive of fundamental liberties of the citizen. In so far as said rulings and decisions relate to the construction and application of Section 205(a) of the Emergency Price Control Act, said decisions and rulings are in conflict with the following cases decided by this court: *U. S. v. Babcock,* 250 U. S. 328; *Tennessee Coal, I. & R. Company v. George,* 233 U. S. 354; *Globe Newspaper Company v. Walker,* 210 U. S. 356 and *Fourth National Bank v. Francklyn,* 120 U. S. 747. These

cases hold that where a statute creates a right and provides an adequate remedy for the enforcement of that right, the remedy thus provided is exclusive and must be strictly pursued to the exclusion of all other remedies. In so far as these decisions and rulings of the Circuit Court of Appeals hold that the trial court could not deny the injunction on the ground that Congress had given to the Administrator no power to make the order upon which the injunction was sought, they are in conflict with the decisions of other Circuit Courts of Appeals on the same matter, to wit, the decisions in *Bowles v. Nu-Way Laundry Company,* 144 Fed. (2d) 741, 746, *Bowles v. Meyers,* 149 Fed. (2d) 440, and *U. S. v. Pepper Bros.,* 142 Fed. (2d) 340. In so far as the decisions and rulings of said Circuit Court of Appeals hold that mere furnishing of space rental for parking without any services is within the coverage of the Act, they are in conflict with the decision of the Emergency Court of Appeals in *Carothers et al. v. Bowles,* 148 Fed. (2d) 554, in which case the Emergency Court of Appeals held that renting of space for the parking of automobiles without the rendition of services is not within the coverage of the Act and not subject to price control. The holding of the Circuit Court of Appeals in this case that whether the business conducted by defendants came within the scope of the Emergency Price Control Act was a question where the jurisdiction of the Emergency Court of Appeals was exclusive, is in conflict with the decision of the Emergency Court of Appeals in *Marlene Linens v. Bowles,* 144 Fed. (2d) 874, in which case the Emergency

Court of Appeals held that its jurisdiction was confined to determining whether an order of the Administrator was valid.

(2) Said Circuit Court of Appeals has decided and held in this cause as follows:

(a) That the judgment of the trial court to the extent that it granted injunctive relief to the Administrator was proper and should be affirmed.

(b) That, although Section 1499.102(c) of M. P. R. 165 was abolished by the Administrator before the case was tried and has never been in force at any time since, the trial court did not err in ordering Carothers to file reports under that Section.

(c) That, although under 1499.102(c) no report was required to be filed unless the ceilings could not be determined under 1499.102(a) or 1499.102(b), and, although there was no proof whatever that ceilings could not have been determined under 1499.102(a) or 1499.102(b), the trial court did not err in ordering Carothers to file reports as prayed for under 1499.102(c).

(d) That, although Carothers was furnishing only space rental without any services, and it was so admitted, stipulated and found, and although there was no authority for the trial court to issue an injunction requiring him to file reports in accordance with the Administrator's prayer, nevertheless, the trial court did not commit error in ordering Carothers to file reports in accordance with the Administrator's prayer.

(e) That, although Section 202 of the Emergency Price Control Act provides in detail how the Admin-

istrator may secure any information he deems necessary or proper to assist him in prescribing any regulation or order under the Act, and although this Section provides for compulsory process of subpoena requiring any and all persons to appear and give testimony before the Administrator, and said Section guarantees immunity from prosecution and from the infliction of penalties for or on account of any transaction, matter or thing, concerning which the party subpoenaed may testify, or produce evidence, documentary or otherwise, before the Administrator, and although there is no statutory authority for coercing the giving of such information by injunction, the trial court nevertheless did not err in granting the relief sought by the Administrator as to the filing of such reports.

In each of the said decisions and rulings said Circuit Court of Appeals committed errors which are now assigned by petitioners, and each of them.

In rendering these decisions said Circuit Court of Appeals has decided important questions of Federal law, and has decided such questions in a way probably in conflict with the applicable decisions of this court. If these important questions of Federal law have not been decided and settled by this court, they should be settled by this court. In making such decisions and rulings said Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by the trial court, as calls for an exercise of this court's power of supervision. In so far as said decision holds that Carothers can be re-

quired by injunction to file reports on his operations although it was stipulated, admitted and found that he was furnishing only space rental without any services, said decision is in conflict with the decision of the Emergency Court of Appeals in *Carothers et al. v. Bowles,* 148 Fed (2d). 554, in which case the Emergency Court of Appeals held that the rental of space for parking without services was not within the coverage of the Act and not subject to price control. The decision departs from the usual and customary course of judicial proceedings in so far as said decision holds that an injunction lies even though Section 202 of the Act (being the section which confers the right upon the Administrator to secure the information) provides in detail how the information is to be secured and provides that under the statutory method the party called upon to testify is to be given proper protection, the remedy provided by the Act being exclusive.

(3) In failing and refusing to grant the motion of Allright Parking System, Ltd., and its component members to dismiss the Administrator's appeal because the issues involved have become moot, the Circuit Court of Appeals committed error and rendered a decision in conflict with the decisions of other Circuit Courts of Appeals. (See *Wynne v. Union City Brewing Company,* 59 Fed. (2d) 733, *Wynne v. Harrison Brewing Company,* 59 Fed. (2d) 734), and has decided a Federal question in a way probably in conflict with applicable decisions of this court.

(4) The Supreme Court has decided many times that where the Government through any of its offi-

cers or agencies, seeks an injunction against the violation of a law, there must be a definite factual showing of illegality or else the injunction must be denied. *Appalachian Coals, Inc. v. United States,* 288 U. S. 344; *National Association of Window Glass Manufacturers v. U. S.,* 263 U. S. 403; and various other cases. To the same effect are the decisions of the Circuit Courts of Appeals. *U. S. v. A. T. & S. F. Railway Co.,* 142 Fed. 176; *Monarch Tobacco Works v. American Tobacco Company,* 565 Fed. 77. In this case the decision of the Circuit Court of Appeals is in conflict with these decisions. This court has provided by Rule 52 of the Rules of Civil Procedure that in all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment. It has also provided by the same rule that if there is any deficiency in the fact findings it is to be corrected on motion. In the case at bar, as we have heretofore pointed out, the facts proved did not entitle the Administrator to the injunctive relief he sought. The fact findings of the trial court did not entitle him thereto, and there was no effort made by the Administrator to have the trial court make findings of fact which would authorize the injunctive relief sought by him. These decisions of the Supreme Court constitute a great bulwark of protection to the citizens of this country. If they are disregarded it will necessarily lead to oppression.

WHEREFORE, your petitioners, and each of them, pray that a writ of certiorari may issue out of and

under the seal of this court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify this cause to this court for review and determination, as provided by the acts of Congress, and that your petitioners, and each of them, may have such other and further relief in the premises as to this court may seem appropriate and proper.

D. M. CAROTHERS, DOING BUSINESS AS ALLRIGHT AUTO PARK.

SPENCER J. SCOTT, MORIN M. SCOTT, ATTORNEY IN FACT FOR SPENCER J. SCOTT, LEE PRICE AND D. M. CAROTHERS, A CO-PARTNERSHIP DOING BUSINESS AS ALLRIGHT PARKING SYSTEM, LTD.

By_____
D. M. CAROTHERS.

WALTER F. BROWN

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No.....

IN THE
Supreme Court of the United States

OCTOBER TERM, 1945

D. M. CAROTHERS, DOING BUSINESS AS ALLRIGHT AUTO PARK, ET AL., *Petitioners,*

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, AND PAUL PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, SUCCESSOR IN OFFICE TO CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Respondents.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinions Below.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit in this case is reported in *Bowles, Price Administrator, v. Carothers, et al.,* and *Carothers et al. v. Bowles, Price Administrator,* 152 Fed. (2d) 603. This opinion is also set out in the record. (R. 58-65.)

Jurisdiction.

The basis on which it is contended that this court has jurisdiction to review the judgment or decree in

question is that the case is a civil case in the United States Circuit Court of Appeals for the Fifth Circuit and jurisdiction is expressly conferred upon the Supreme Court by judicial code, Section 240, amended (28 U.S.C.A. Section 347). The date of the judgment or decree sought to be reviewed is December 13th, 1945 (R. 66). Petition for rehearing was filed in the United States Circuit Court of Appeals by the petitioners on January 3rd, 1946 (R. 67) and the petition for rehearing was denied by such Circuit Court of Appeals on January 10, 1946 (R. 86).

Statement of the Case.

This has already been stated in the preceding petition under Statement of the Matter Involved (pages 2-27) and such statement is hereby adopted and made a part of this brief.

Specification of Assigned Errors Intended to Be Urged by D. M. Carothers, Doing Business as Allright Auto Park.

(1) The Circuit Court of Appeals erred in ordering and adjudging that the judgment of the trial court to the extent that it denied the Price Administrator injunctive relief be reversed and remanded for further proceedings not inconsistent with the opinion of the Circuit Court of Appeals.

(2) The Circuit Court of Appeals erred in ordering and adjudging that the judgment of the trial court to the extent that it denied the Price Administrator injunctive relief be reversed and remanded for further proceedings not inconsistent with the opinion of

the Circuit Court of Appeals, the only injunctive relief sought by the Administrator against D. M. Carothers and denied by the trial court being as follows: "A permanent injunction against defendant D. M. Carothers, individually, restraining him from charging, demanding and receiving rates for parking services at any establishment now operated or that may hereafter be operated by him in excess of the maximum legal rates provided by Maximum Price Regulation No. 165" and "from violating Maximum Price Regulation No. 165 in any and all respects."

(3) The Circuit Court of Appeals erred in finding that it was admitted at the trial that D. M. Carothers, in violation of Section 102 (c) of Maximum Price Regulation No. 165, had failed to report prices being charged at eight of his lots in Houston.

(4) The Circuit Court of Appeals erred in holding that, while a court in the exercise of sound discretion may refuse to issue an injunction restraining the violation of an administrative order establishing maximum prices, it is error if the court so rules solely because it considers the order or regulation to be invalid, even though the Price Administrator has no authority granted by Congress or otherwise conferred upon him to make the order, and even though Congress has expressly denied him the power to make such order.

(5) The Circuit Court of Appeals erred in finding that the Administrator alleged and proved that while the rates fixed by the Administrator for the ten Houston lots operated by D. M. Carothers were being temporarily complied with, it was not an earnest

or willing compliance since Carothers intended to appeal to the Emergency Court for relief therefrom.

(6) The Circuit Court of Appeals erred in holding that under Section 205 (a) of the Emergency Price Control Act the trial court was in error in refusing to grant the blanket injunction sought by the Administrator against D. M. Carothers individually.

(7) The Circuit Court of Appeals erred in holding that under Section 205 (a) of the Emergency Price Control Act the trial court was in error to the extent that it denied the Administrator injunctive relief against D. M. Carothers, individually, even though there was no evidence that D. M. Carothers had engaged or was about to engage in any acts or practices which constituted or would constitute a violation of any provision of Section 4 of said Act, and even though the evidence showed and the court found that he was complying with all price ceilings on the lots referred to in the Administrator's complaint as being operated and controlled by him.

(8) The Circuit Court of Appeals erred in holding that because D. M. Carothers had stated that he intended to appeal to the Emergency Court of Appeals for relief from the order fixing ceilings on his Houston lots, his compliance was not an earnest or willing compliance, and, though there was no evidence that he had engaged or was about to engage in any act or practice which constituted or would constitute a violation of the maximum prices fixed by the Administrator, and though it was admitted by the parties and found by the court that he was complying with the

order fixing these maximum prices, nevertheless the trial court's judgment, to the extent that it denied the Administrator injunctive relief against D. M. Carothers, was erroneous.

(9) The Circuit Court of Appeals erred in affirming the judgment of the trial court to the extent that it granted injunctive relief to the Price Administrator, and in overruling the assignment of error wherein D. M. Carothers, doing business as Allright Auto Park, alleged that the trial court erred in directing him to file with the Harris County War Price and Rationing Board his schedule of prices on the premises located in Houston, Texas, and described in the judgment of the trial court.

Specification of Assigned Errors Intended to Be Urged by Allright Parking System, Limited, Composed of Spencer J. Scott, Morin M. Scott, Attorney in Fact for Spencer J. Scott, Lee Price and D. M. Carothers.

(1) The Circuit Court of Appeals erred in failing and refusing to dismiss the Administrator's appeal as against the partnership Allright Parking System, Limited, on the ground that the issues involved in such appeal had become moot.

(2) The Circuit Court of Appeals erred in ordering and adjudging that the judgment of the trial court to the extent that it denied the Price Administrator injunctive relief against said limited partnership and its component members be reversed and remanded for further proceedings not inconsistent with the opinion of the Circuit Court of Appeals.

Argument.

The motion to dismiss the appeal of the Administrator in so far as it involves the Dallas lot and the limited co-partnership Allright Parking System, Ltd., and its component members, on the ground that the issues involved in such appeal had become moot before the case was reached in the Circuit Court of Appeals (R. 54-56) was well taken and should have been sustained. *Wynne v. Union City Brewing Company,* 59 Fed.2d 733; *Wynne v. Harrison Brewing Company,* 59 Fed.2d 734; *U. S. v. Aluminum Company of America,* 322 U. S. 716.

The trial court was clearly right in denying the injunctions prayed for in the Administrator's prayers 2 and 4. In *Carothers et al., v. Bowles,* 148 Fed.2d 554, the Emergency Court of Appeals said:

> "It may be conceded that one who merely rents a piece of ground to the owner of an automobile in order that the latter may store his car upon it, without more, is not engaged in rendering a storage service within the meaning of the Act, but is merely engaged in the renting of real estate."

It was stipulated on the trial before Judge Kennerly that Carothers was merely furnishing space rental without any services in connection therewith (R. 8-9); the court so found (R. 41); and this fact finding was not attacked. There was no basis in the pleadings, the evidence or the findings of fact for the rendition of any judgment other than a denial of these prayers, and the Circuit Court of Appeals erred in failing to so hold. The Emergency Court of Appeals

concurred with the trial court in this case in holding that "the mere furnishing of space for the parking of automotive vehicles" was not within the coverage of the Act.

For the same reason pointed out in the last preceding paragraph there was no error in the trial court's denial of the injunction against the partnership and the Dallas lot, and the Circuit Court of Appeals erred in failing to so hold.

The injunctions sought by the Administrator were general injunctions in the very broadest of terms (R. 13-14). Under no circumstances would it have been proper for the trial court to grant them and the Circuit Court of Appeals erred in failing to so hold. A case very much in point is *New York N. H. & H. R. Co. v. Interstate Commerce Commission,* 200 U. S. 361. This court says in said case that a defendant under such injunction would cease to be under the protection of the law of the land and must thereafter conduct all its business under the jeopardy of punishment for contempt for violating a general injunction. Such an injunction, so this court says, would be a violation of the most elementary principles of justice and most destructive of the fundamental liberties of the citizen.

The following quotation is from 28 Amer. Jur. 473:

> "If the wrongs complained of and against which injunctive relief is sought are alleged violations of a statute in certain particulars, the decree may restrain the defendant from further like violations of the Act, but should not enjoin in general terms violations of the Act in the future in any particular, because an injunction of such general character would be violative of the ele-

> mentary principles of justice, in that it would compel the defendant thereafter to conduct himself and his business under the jeopardy of punishment for contempt for violating a general injunction."

See also 43 C. J. 760.

It seems to be well settled by the decisions of the Supreme Court that where a statute creates a right and provides an adequate remedy for the enforcement of that right, the remedy thus provided is exclusive and must be strictly pursued to the exclusion of all other remedies. *U. S. v. Babcock,* 250 U. S. 328; *Tennessee Coal, I. & R. Company v. George,* 233 U. S. 354; *Globe Newspaper Company v. Walker,* 210 U. S. 356 and *Fourth National Bank v. Francklyn,* 120 U. S. 747. The Emergency Price Control Act creates a new right to an injunction and specifies how that remedy may be secured. Section 205(a) of the Act. It provides clearly that the injunction cannot be granted except upon a showing by the Administrator that the defendant has engaged or is about to engage in some act or practice which constitutes or will constitute a violation of some provision of Section 4 of the Act. It would seem clear that no injunction can issue except upon such showing. However, in the case at bar there was no showing that Carothers had engaged in any act or practice which constituted or would constitute a violation of the alleged order fixing the maximum prices on the lots operated by him (R. 36, 43). And yet the Circuit Court of Appeals held that the trial court erred in denying the injunction prayed for. The Circuit Court of Appeals writes into the statute a

provision that not only must the defendant comply with an order but he must do it willingly or injunction will lie. The Circuit Court of Appeals was wholly without authority to enlarge the Act and create this qualification. The Circuit Court of Appeals also holds that if a seller of commodities thinks he is entitled to relief against an administrative order and he announces his intention of pursuing his statutory remedy, he thereby forfeits his right to conduct his business under the protection of the law and becomes subject to injunction under Section 205(a). Surely this construction is seriously erroneous and should not be permitted to stand. No such qualification is in the law and none can be added thereto by the court's decree. Surely a citizen cannot be penalized and visited with such dire consequences merely because he sees fit to take advantage of a right guaranteed by the Act. Furthermore, the Act is so worded that it clearly means that it limits the injunction to a restraint from engaging in the very acts or practice in which the defendant has engaged or is about to engage, and this section does not give the court a right to enjoin the defendant generally against future violations of the law or any code of regulations theretofore set up by the Administrator or thereafter to be set up or amended by him. These encroachments on the Act are fraught with such serious consequences that they clearly call for an exercise of this court's power of supervision.

The Act provides that every regulation or order dealing with commodities must be a regulation or order of general applicability and effect (50 U.S.C.A.

War Appendix Section 902). A distinction is made between commodities and rents, no such restriction being placed on the Administrator's power regarding rents. The reason for such differentiation is plain. The Administrator's order upon which he seeks the injunction against petitioner Carothers is clearly not an order of general force or efect (R. 15-17). The trial court was clearly authorized to decline to enjoin compliance with this unauthorized order. The Circuit Court of Appeals recognizes that under the rules laid down by the Supreme Court the trial court in the exercise of sound judicial discretion may refuse to issue an injunction restraining the violation of an administrative order establishing maximum prices, but it says that the trial court cannot do so solely because it considers the order or regulation to be invalid. It goes further and says in effect that this is true "whether such validity be tested by constitutional requirement, by the grant of power in the statute under which they are adopted or by modifications made in that grant of power." The court cites in support of that rule *Bowles v. Nu-Way Laundry Company,* 144 Fed. 2d 741, 746, and *Bowles v. Meyers,* 149 Fed. 2d 440. Neither of these cases is in point for they both expressly recognize that it is the province and the duty of the trial court to determine for itself whether the party sought to be enjoined is within the coverage of the Act, the only limitation being that it is not competent for the court to substitute its judgment for that of the Administrator as to the fairness or the equity of the regulation or price schedule. See also *U. S. v. Pepper Bros.,* 142 Fed.2d 340. So far as we

have been able to find the Supreme Court has never held that the fact that an administrative officer has usurped a power not conferred by statute is not a ground which can be considered by a District Court when a mandatory injunction is sought to enforce the void order. If there could be a stronger reason for refusing an injunction than the fact that the Administrator has no constitutional or statutory authority for making the order, it would be hard to conceive what the reason could be.

On June 30th, 1944, the Administrator filed his amended complaint in the court below asking for a mandatory injunction requiring the defendants to make and file certain computations under Section 1499.102(c) of Maximum Price Regulation No. 165 (R. 6-13). On the very next day, July 1st, 1944, the Administrator amended M.P.R. 165 and eliminated Section 1499.102(c) (7 F.R. 6430). On the 3rd day of July, 1944, the matter came on for hearing before the court (R. 35). On September 23, 1944, Judge Kennerly filed his findings and conclusions (R. 40-46), and on October 27th, 1944, he rendered his final judgment granting the mandatory injunction thus sought (R. 47).

The pertinent portions of "M.P.R. No. 165, as amended—services" are set out in the appendix attached to this petition and brief. The pertinent provisions of "R.M.P.R. 165, July 1st, 1944," which superseded the previous regulations are also set out in said appendix.

Obviously the defendant Carothers could not be mandatorily enjoined to make and file a computation

under a regulation in force when the complaint was filed but abolished and abrogated before the trial.

The Administrator admits in his complaint (R. 7-8) that if the defendant Carothers can determine his ceiling price under paragraph (a) or (b), there is no regulation requiring him to file any computation whatever, and that he cannot be required to file under 1499.102(c) unless the Administrator first establishes that the defendant Carothers cannot determine his prices under the previous sections.

A court cannot grant a mandatory injunction on the assumption that essential facts exist when there is no proof of existence thereof and no admission that they exist.

There was no admission, allegation or proof that defendant Carothers did not in March, 1942, supply the same service, if it was a service, as he is alleged to have supplied in 1944.

There is also no admission, allegation or proof that in March, 1942, the defendant Carothers was not using a rate or a pricing method to determine his prices, which rate or pricing method he was entitled to use under "R.M.P.R. 165, July 1, 1944."

There was no admission, allegation or proof that, if the defendant Carothers did not actually supply in March, 1942, the services, if any, that he is alleged to have supplied in 1944, he did not offer to supply such services, if any, in March, 1942, to a purchaser of the same class. There was no admission, allegation or proof that the defendant Carothers could not have determined the prices to be charged for the alleged services, if any, in 1944, by applying his highest March,

1942, charges to a purchaser of the same class which would, by the usual trade practice of defendant Carothers have been used by him had he supplied such services in March, 1942. There was no admission, allegation or proof that the defendant Carothers had no competitor with maximum prices for the same services to purchasers of the same class. There was, therefore, no basis whatever for the issuance of the mandatory injunction requested and issued.

In promulgating "R.M.P.R.165, July 1, 1944," the Administrator deleted not only Section 1499.102(c) but also Section 1499.122 prescribing the form 265.1 to be used in complying with Section 1499.102(c). (7 F. R. 6428 and 8 F. R. 7439, 7440.)

When the Administrator promulgated "R.M.P.R. 165, July 1, 1944" he not only deleted Section 1499.102 (c) of "M.P.R.R. 165, as amended—services," but he went further. In Section 1499.101(c) (4) of "M.P.R. 165, as amended" he provided that said last mentioned regulation should apply to services in connection with storage. In "R.M.P.R. 165, July 1, 1944" he expressly provided by Section 1 (d) (2) that storage services and services incident thereto should be excepted from "R.M.P.R. 165, July 1, 1944" and should be governed by the "General Maximum Price Regulation" (8 F. R. 7440).

Another reason why the injunction requiring the filing of reports under 1499.102(c) was error is this: Section 202 of the Act provides in detail how the Administrator is to secure any information which he deems necessary and proper to assist him in prescribing any regulation or order under the Act. This Sec-

tion provides for compulsory process of subpoena requiring any and all persons to appear and give testimony before the Administrator and it guarantees immunity from prosecution and infliction of penalties in connection with any matter upon which the persons subpoenaed give evidence, documentary or otherwise. The statutory method is exclusive and an attempt to coerce the giving of information by injunction without the protection provided by statute is unnecessary, unauthorized and highly oppressive. *United States v. Babcock,* 250 U. S. 328; *Tennessee Coal, I. & R. Company v. George,* 233 U. S. 354; *Globe Newspaper Company v. Walker,* 210 U. S. 356; and the *Fourth National Bank v. Francklyn,* 120 U. S. 747.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory power, by granting a writ of certiorari and thereafter reviewing and reversing the decree of the U. S. Circuit Court of Appeals for the Fifth Circuit in this case.

WALTER F. BROWN

DURELL CAROTHERS

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